

UNITED STATES
ENVIRONMENTAL PROTECTION AGENCY
REGION 10

IN THE MATTER OF:
Pier 99 - Portland Site
Portland, Multnomah County, Oregon

Milton Brown

Respondent

ADMINISTRATIVE SETTLEMENT
AGREEMENT AND ORDER ON
CONSENT FOR REMOVAL ACTION

U.S. EPA Region 10
CERCLA Docket No. 10-2012-0191

Proceeding Under Sections 104, 106(a), 107
and 122 of the Comprehensive
Environmental Response, Compensation,
and Liability Act, as amended, 42 U.S.C.
§§ 9604, 9606(a), 9607 and 9622

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I. JURISDICTION AND GENERAL PROVISIONS

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is entered into voluntarily by the United States Environmental Protection Agency ("EPA") and Milton Brown ("Respondent"). This Settlement Agreement provides for the performance of an Engineering Evaluation/Cost Analysis ("EE/CA") or its equivalent by Respondent and the reimbursement of certain response costs incurred by the United States at or in connection with the "Pier 99 - Portland Site" (the "Site") generally located at 1610 N. Pier 99 Street in Portland, Multnomah County, Oregon.

2. This Settlement Agreement is issued under the authority vested in the President of the United States by Sections 104, 106(a), 107 and 122 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. §§ 9604, 9606(a), 9607 and 9622, as amended ("CERCLA").

3. EPA has notified the State of Oregon (the "State") of this action pursuant to Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

4. EPA and Respondent recognize that this Settlement Agreement has been negotiated in good faith and that the actions undertaken by Respondent in accordance with this Settlement Agreement do not constitute an admission of any liability. Respondent does not admit, and retains the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the findings of facts, conclusions of law, and determinations in Sections IV and V of this Settlement Agreement. Respondent agrees to comply with and be bound by the terms of this Settlement Agreement and further agrees that he will not contest the basis or validity of this Settlement Agreement or its terms.

II. PARTIES BOUND

5. This Settlement Agreement applies to and is binding upon EPA and upon Respondent and his heirs, successors and assigns. Any change in ownership or corporate status of a Respondent including, but not limited to, any transfer of assets or real or personal property shall not alter such Respondent's responsibilities under this Settlement Agreement.

6. Respondent shall ensure that his contractors, subcontractors, and representatives receive a copy of this Settlement Agreement and comply with this Settlement Agreement. Respondent shall be responsible for any noncompliance with this Settlement Agreement.

III. DEFINITIONS

7. Unless otherwise expressly provided in this Settlement Agreement, terms used in this Settlement Agreement which are defined in CERCLA or in regulations promulgated under

CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Settlement Agreement or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, *et seq.*
- b. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.
- c. "Effective Date" shall be the effective date of this Settlement Agreement as provided in Section XXIX.
- d. "EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.
- e. "Future Response Costs" shall mean all costs, including, but not limited to, direct and indirect costs, that the United States incurs in reviewing or developing plans, reports and other items pursuant to this Settlement Agreement, verifying the Work, or otherwise implementing, overseeing, or enforcing this Settlement Agreement, including but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, the costs incurred pursuant to Paragraph 31 (costs and attorneys fees and any monies paid to secure access, including the amount of just compensation), Paragraph 41 (emergency response), and Paragraph 66 (work takeover). Future Response Costs shall also include all Interim Response Costs, and all Interest on those Past Response Costs Respondent has agreed to reimburse under this Settlement Agreement that has accrued pursuant to 42 U.S.C. § 9607(a) during the period from June 30, 2012 to the Effective Date.
- f. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- g. "Interim Response Costs" shall mean all costs, including direct and indirect costs, a) paid by the United States in connection with the Site between June 30, 2012 and the Effective Date, or b) incurred prior to the Effective Date, but paid after that date.
- h. "National Contingency Plan" or "NCP" shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

i. “ODEQ” shall mean the Oregon Department of Environmental Quality and any successor departments or agencies of the State.

j. “Settlement Agreement” shall mean this Administrative Settlement Agreement and Order on Consent and all appendices attached hereto (listed in Section XXVIII). In the event of conflict between this Settlement Agreement and any appendix, this Settlement Agreement shall control.

k. “Paragraph” shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

l. “Parties” shall mean EPA and Respondent.

m. “Past Response Costs” shall mean all costs, including, but not limited to, direct and indirect costs, that the United States paid at or in connection with the Site through June 30, 2012, plus Interest on all such costs through such date.

n. “RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

o. “Respondent” shall mean those Parties identified in Appendix A.

p. “Section” shall mean a portion of this Settlement Agreement identified by a Roman numeral.

q. “Site” shall mean the Pier 99 - Portland Site, encompassing the upland portions of the approximately 1.07 acre property located at 1610 N. Pier 99 Street in Portland, Multnomah County, Oregon and depicted generally on the map attached as Appendix B.

r. “State” shall mean the State of Oregon.

s. “Statement of Work” or “SOW” shall mean the statement of work for implementation of the EE/CA or its equivalent, as set forth in Appendix C to this Settlement Agreement, and any modifications made thereto in accordance with this Settlement Agreement.

t. “Waste Material” shall mean 1) any “hazardous substance” under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); 2) any pollutant or contaminant under Section 101(33) of CERCLA, 42 U.S.C. § 9601(33); and 3) any “solid waste” under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

u. “Work” shall mean all activities Respondent is required to perform under this Settlement Agreement.

IV. FINDINGS OF FACT

8. The Site is comprised of a 1.07 acre parcel with associated docks in the "North Portland Harbor - Columbia River," the portion of the Columbia River that runs between Hayden Island and North Portland. The Site is legally identified as Township 2 North, Range 1 East, Section 33 in Portland, Multnomah County, Oregon.

9. The Site was initially used as a boat yard around 1937. Over the course of approximately 70 years, a number of companies owned and/or operated a variety of businesses on the Site, including a boat repair facility, a machine shop and an upholstery shop.

10. The Site is currently owned by Respondent Milton Brown and is being used to store marine vessels in the boat houses and slips along the dock.

11. The Oregon Department of Environmental Quality ("ODEQ") has received numerous pollution complaints alleging that past business activities on the Site were contaminating the Colombia River and nearby properties.

12. In 2003, at the request of ODEQ, Respondent Milton Brown had a state Expanded Preliminary Assessment ("XPA") performed on the Site. Eight surface soil samples were collected and analyzed for toxic metals, volatile organic compounds ("VOCs"), diesel and oil.

13. During the XPA, petroleum and lead contamination were detected in soil near a crane. Based on these findings, approximately 21.5 cubic yards of contaminated soil were excavated and removed from the area immediately surrounding the crane.

14. In July 2007, ODEQ referred the Site to EPA for further investigation.

15. In 2008 and 2009, EPA's contractor, Ecology and Environment, Inc., conducted a federal Superfund Preliminary Assessment ("PA") and a Site Investigation ("SI") for the Site.

16. Potential sources of contamination include the Upland Boat Maintenance and Repair Areas, the Stormwater Outfalls and the Eastern Solid Waste Storage Area. The Upland Boat Maintenance and Repair Areas drain to the nearby Gravel Filter Area and/or onto the slope that leads to the "North Portland Harbor-Columbia River." The Site includes only upland areas as defined above in Section III.

17. SI sample results indicated, in part:

a. The presence of three organotins, pesticides/PCBs (polychlorinated biphenyls), five semivolatile organic compounds ("SVOCs"), and twelve Target Analyte List ("TAL") metals at significant concentrations with respect to background in the surface soil sample collected from the gravel filter area located on the southwest side of the upland boat

maintenance repair area.

b. The presence of three organotins, four pesticides/PCBs, four SVOCs, and thirteen TAL metals at significant concentrations with respect to background in 2 surface soil samples collected from the eastern solid waste storage area.

c. That contamination is potentially migrating from Site sources towards sediment targets, including areas where threatened and endangered species are known to be present.

V. CONCLUSIONS OF LAW AND DETERMINATIONS

18. Based on the Findings of Fact set forth above, and the Administrative Record supporting this EE/CA (or its equivalent), EPA has determined that:

a. The Pier 99 - Portland Site is a "facility" as defined by Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. The contamination found at the Site, as identified in the Findings of Fact above, includes "hazardous substance(s)" as defined by Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

c. Respondent is a "person" as defined by Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Respondent is a responsible party under Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), and is jointly and severally liable for performance of response action and for response costs incurred and to be incurred at the Site.

i. Respondent Milton Brown is the "owner" and/or "operator" of the facility, as defined by Section 101(20) of CERCLA, 42 U.S.C. § 9601(20), and within the meaning of Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1).

e. The conditions described in the Findings of Fact above constitute an actual or threatened "release" of a hazardous substance from the facility as defined by Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

f. The actual or threatened release of hazardous substances within and from the Site may present an imminent and substantial endangerment to the public health, welfare, or the environment, within the meaning of Section 106(a) of CERCLA, 42 U.S.C. § 9606(a). The factors relevant to this determination may include, but are not limited to, the elevated concentrations of hazardous substances at or near the surface and the actual or potential exposure

of nearby human populations, animals, and/or aquatic organisms to such hazardous substances.

g. An EE/CA (or its equivalent) supporting a removal action is warranted at the Site in accordance with Section 300.415(b) of the NCP for reasons including potential exposure of ecological and human receptors to hazardous substances.

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the foregoing Findings of Fact, Conclusions of Law, Determinations, and the Administrative Record for this Site, it is hereby Ordered and Agreed that Respondent shall comply with all provisions of this Settlement Agreement, including, but not limited to, all attachments to this Settlement Agreement and all documents incorporated by reference into this Settlement Agreement.

VII. DESIGNATION OF CONTRACTOR, PROJECT COORDINATOR, AND ON-SCENE COORDINATOR

20. Respondent shall retain one or more contractors to perform the Work and shall notify EPA of the name(s) and qualifications of such contractor(s) within 14 days of the Effective Date. Respondent shall also notify EPA of the name(s) and qualification(s) of any other contractor(s) or subcontractor(s) retained to perform the Work at least 3 days prior to commencement of such Work. EPA retains the right to disapprove of any or all of the contractors and/or subcontractors retained by Respondent. If EPA disapproves of a selected contractor, Respondent shall retain a different contractor and shall notify EPA of that contractor's name and qualifications within 5 days of EPA's disapproval.

21. Within 14 days after the Effective Date, Respondent shall designate a Project Coordinator who shall be responsible for administration of all actions by Respondent required by this Settlement Agreement and shall submit to EPA the designated Project Coordinator's name, address, telephone number, and qualifications. To the greatest extent possible, the Project Coordinator shall be present on Site or readily available during Site work. EPA retains the right to disapprove of the designated Project Coordinator. If EPA disapproves of the designated Project Coordinator, Respondent shall retain a different Project Coordinator and shall notify EPA of that person's name, address, telephone number, and qualifications within 2 days following EPA's disapproval. Receipt by Respondent's Project Coordinator of any notice or communication from EPA relating to this Settlement Agreement shall constitute receipt by all Respondent.

22. EPA has designated Jeffry Rodin of the Office of Environmental Cleanup, Emergency Response Unit, Region 10, as its On-Scene Coordinator ("OSC"). Except as otherwise provided in this Settlement Agreement, Respondent shall direct all submissions required by this Settlement Agreement to the OSC at 1200 Sixth Avenue, Suite 900, ECL-116, Seattle, Washington 98101. The OSC may be reached by telephone at (206) 553-6709 or email at

rodin.jeffry@epa.gov.

23. EPA and Respondent shall have the right, subject to Paragraph 21, to change their respective designated OSC or Project Coordinator. Respondent shall notify EPA 3 days before such a change is made. The initial notification may be made orally, but shall be promptly followed by a written notice.

VIII. WORK TO BE PERFORMED

24. Respondent shall perform, at a minimum, all actions necessary to implement the Statement of Work, attached hereto as Appendix C.

25. Work Plan and Implementation.

a. Within 21 days after EPA receives notification of the contractor retained by Respondent pursuant to Section VII, Respondent shall submit to EPA for approval a draft EE/CA (or its equivalent) Work Plan for performing the actions generally described in the Statement of Work, attached hereto as Appendix C. The draft Work Plan shall provide a description of, and an expeditious schedule for, the actions required by this Settlement Agreement.

b. Within 21 days after EPA receives notification of the contractor retained by Respondent pursuant to Section VII, Respondent shall submit a draft Sampling and Analysis Plan ("SAP") to EPA for EPA review and approval. The SAP shall include procedures for collecting, transporting, and analyzing all samples collected at the Site, as well as procedures for quality assurance/quality control ("QA/QC"). The SAP shall comply with 40 C.F.R. 300.415(b)(4)(ii) and include a Quality Assurance Project Plan ("QAPP"). The QAPP shall be prepared in accordance with "EPA Requirements for Quality Assurance Project Plans (QA/R-5)" (EPA/240/B-01/003, March 2001, Reissued May 2006) and "Guidance for Quality Assurance Project Plans (G-5)" (EPA/240/R-02/009, December 2002).

c. EPA may approve, disapprove, require revisions to, or modify the draft EE/CA (or its equivalent) Work Plan and/or the draft SAP in whole or in part. If EPA requires revisions, Respondent shall submit a revised draft Work Plan and/or draft SAP within 14 days of receipt of EPA's notification of the required revisions. Respondent shall implement the Work Plans and SAP as approved in writing by EPA in accordance with the schedule approved by EPA. Once approved, or approved with modifications, the Work Plan, the SAP, the schedule, and any subsequent modifications shall be incorporated into and become fully enforceable under this Settlement Agreement.

d. Respondent shall not commence any Work except in conformance with the terms of this Settlement Agreement. Respondent shall not commence implementation of the Work Plan or SAP developed hereunder until receiving written EPA approval pursuant to

Paragraph 25(c).

26. Health and Safety Plan. Within 21 days after EPA receives notification of the contractor retained by Respondent pursuant to Section VII, Respondent shall submit for EPA review and comment a plan that ensures the protection of the public health and safety during performance of on-Site work under this Settlement Agreement. This plan shall be prepared in accordance with EPA's Standard Operating Safety Guide (PUB 9285.1-03, PB 92-963414, June 1992). In addition, the plan shall comply with all currently applicable Occupational Safety and Health Administration ("OSHA") regulations found at 29 C.F.R. Part 1910. If EPA determines that it is appropriate, the plan shall also include contingency planning. Respondent shall incorporate all changes to the plan recommended by EPA and shall implement the plan during the pendency of the EE/CA (or its equivalent).

27. Quality Assurance and Sampling.

a. All sampling and analyses performed pursuant to this Settlement Agreement shall conform to EPA direction, approval, and guidance regarding sampling, quality assurance/quality control ("QA/QC"), data validation, and chain of custody procedures. Respondent shall ensure that the laboratory used to perform the analyses participates in a QA/QC program that complies with the appropriate EPA guidance. Respondent shall follow, as appropriate, "Quality Assurance/Quality Control Guidance for Removal Activities: Sampling QA/QC Plan and Data Validation Procedures" (OSWER Directive No. 9360.4-01, April 1, 1990), as guidance for QA/QC and sampling. Respondent shall only use laboratories that have a documented Quality System that complies with ANSI/ASQC E-4 1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs" (American National Standard, January 5, 1995), and "EPA Requirements for Quality Management Plans (QA/R-2) (EPA/240/B-01/002, March 2001)," or equivalent documentation as determined by EPA. EPA may consider laboratories accredited under the National Environmental Laboratory Accreditation Program ("NELAP") as meeting the Quality System requirements.

b. Upon request by EPA, Respondent shall have such a laboratory analyze samples submitted by EPA for QA monitoring. Respondent shall provide to EPA the QA/QC procedures followed by all sampling teams and laboratories performing data collection and/or analysis.

c. Upon request by EPA, Respondent shall allow EPA or its authorized representatives to take split and/or duplicate samples. Respondent shall notify EPA not less than 5 days in advance of any sample collection activity, unless shorter notice is agreed to by EPA. EPA shall have the right to take any additional samples that EPA deems necessary. Upon request, EPA shall allow Respondent to take split or duplicate samples of any samples it takes as part of its oversight of Respondent's implementation of the Work.

28. Reporting.

a. Respondent shall submit a written progress report to EPA concerning actions undertaken pursuant to this Settlement Agreement daily during fieldwork and, otherwise, every 15th business day after the date of receipt of EPA's approval of the EE/CA (or its equivalent) Work Plan until termination of this Settlement Agreement, unless otherwise directed in writing by the OSC. These reports shall describe all significant developments during the preceding period, including the actions performed and any problems encountered, analytical data received during the reporting period, and the developments anticipated during the next reporting period, including a schedule of actions to be performed, anticipated problems, and planned resolutions of past or anticipated problems.

b. Respondent shall submit 2 copies of all plans, reports or other submissions required by this Settlement Agreement, the Statement of Work, or any approved work plan. Upon request by EPA, Respondent shall submit such documents in electronic form.

c. Respondents who own or control property at the Site shall, at least 30 days prior to the conveyance of any interest in real property at the Site, give written notice to the transferee that the property is subject to this Settlement Agreement and written notice to EPA of the proposed conveyance, including the name and address of the transferee. Respondents who own or control property at the Site also agree to require that their successors comply with the immediately proceeding sentence and Sections IX (Site Access) and X (Access to Information).

d. EE/CA (or its equivalent) Report. In accordance with the SOW, within 75 days of EPA's approval of the final EE/CA (or its equivalent) Work Plan, Respondent shall submit for EPA review and approval an EE/CA report. The EE/CA report shall include, but is not limited to:

- i. Identification of the removal objectives.
- ii. Identification and comparative analysis of removal action alternatives, including an analysis of each alternative's effectiveness, cost, and ability to be implemented.
- iii. Identification of the recommended removal action alternative(s) for the Site or for each portion of the Site, as appropriate.
- iv. The report shall also include the following certification signed by a person who supervised or directed the preparation of that report:

"Under penalty of law, I certify that to the best of my knowledge, after appropriate inquiries of all relevant persons involved in the preparation of the report, the information submitted is true, accurate, and complete. I am aware that there are significant penalties for

submitting false information, including the possibility of fine and imprisonment for knowing violations.”

e. Biological Evaluation Report. In accordance with the SOW, Respondent shall submit, for EPA review and approval, a Biological Evaluation Report.

f. Cultural Resources Evaluation Report. In accordance with the SOW, Respondent shall submit, for EPA review and approval, a Cultural Resources Evaluation Report.

29. Off-Site Shipments.

a. Respondent shall, prior to any off-Site shipment of Waste Material from the Site to an out-of-state waste management facility, provide written notification of such shipment of Waste Material to the appropriate state environmental official in the receiving facility's state and to the On-Scene Coordinator. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed 10 cubic yards.

- i. Respondent shall include in the written notification the following information: 1) the name and location of the facility to which the Waste Material is to be shipped; 2) the type and quantity of the Waste Material to be shipped; 3) the expected schedule for the shipment of the Waste Material; and 4) the method of transportation. Respondent shall notify the state in which the planned receiving facility is located of major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.
- ii. The identity of the receiving facility and state will be determined by Respondent following the award of the contract for the EE/CA (or its equivalent). Respondent shall provide the information required by Paragraph 29(a) and 29(b) as soon as practicable after the award of the contract and before the Waste Material is actually shipped.

b. Before shipping any hazardous substances, pollutants, or contaminants from the Site to an off-Site location, Respondent shall obtain EPA's certification that the proposed receiving facility is operating in compliance with the requirements of CERCLA Section 121(d)(3), 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440. Respondent shall only send hazardous substances, pollutants, or contaminants from the Site to an off-Site facility that complies with the requirements of the statutory provision and regulation cited in the preceding sentence.

IX. SITE ACCESS

30. If the Site, or any other property where access is needed to implement this Settlement Agreement, is owned or controlled by any of the Respondents, such Respondent shall, commencing on the Effective Date, provide EPA and its representatives, including contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Settlement Agreement.

31. Where any action under this Settlement Agreement is to be performed in areas owned by or in possession of someone other than Respondent, Respondent shall use his best efforts to obtain all necessary access agreements within 15 days after the Effective Date, or as otherwise specified in writing by the OSC. Respondent shall immediately notify EPA if after using his best efforts he is unable to obtain such agreements. For purposes of this Paragraph, "best efforts" includes the payment of reasonable sums of money in consideration of access. Respondent shall describe in writing their efforts to obtain access. EPA may then assist Respondent in gaining access, to the extent necessary to effectuate the response actions described in this Settlement Agreement, using such means as EPA deems appropriate. Respondent shall reimburse EPA for all costs and attorney's fees incurred by the United States in obtaining such access, in accordance with the procedures in Section XV (Payment of Response Costs).

32. Notwithstanding any provision of this Settlement Agreement, EPA retains all of its access authorities and rights, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

X. ACCESS TO INFORMATION

33. Respondent shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Settlement Agreement, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Respondent shall also make available to EPA, for purposes of investigation, information gathering, or testimony, his employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

34. Respondent may assert business confidentiality claims covering part or all of the documents or information submitted to EPA under this Settlement Agreement to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. § 2.203(b). Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Respondent that the documents or information are not confidential under the standards of Section

104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such documents or information without further notice to Respondent.

35. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Respondent asserts such a privilege in lieu of providing documents, he shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the contents of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that they are privileged.

36. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XI. RECORD RETENTION

37. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), each Respondent shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary. Until 10 years after Respondent's receipt of EPA's notification pursuant to Section XXVII (Notice of Completion of Work), Respondent shall also instruct his contractors and agents to preserve all documents, records, and information of whatever kind, nature or description relating to performance of the Work.

38. At the conclusion of this document retention period, Respondent shall notify EPA at least 90 days prior to the destruction of any such records or documents, and, upon request by EPA, Respondent shall deliver any such records or documents to EPA. Respondent may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Respondent asserts such a privilege, he shall provide EPA with the following: 1) the title of the document, record, or information; 2) the date of the document, record, or information; 3) the name and title of the author of the document, record, or information; 4) the name and title of each addressee and recipient; 5) a description of the subject of the document, record, or information; and 6) the privilege asserted by Respondent. However, no documents, reports or other information created or generated pursuant to the requirements of this Settlement Agreement shall be withheld on the grounds that

they are privileged.

39. Each Respondent hereby certifies individually that to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents or other information (other than identical copies) relating to its potential liability regarding the Site since notification of potential liability by EPA or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XII. COMPLIANCE WITH OTHER LAWS

40. Respondent shall perform all actions required pursuant to this Settlement Agreement in accordance with all applicable state and federal laws and regulations except as provided in Section 121(e) of CERCLA, 42 U.S.C. § 6921(e), and 40 C.F.R. §§ 300.400(e) and 300.415(j). In accordance with 40 C.F.R. § 300.415(j), all on-Site actions required pursuant to this Settlement Agreement shall, to the extent practicable, as determined by EPA, considering the exigencies of the situation, attain applicable or relevant and appropriate requirements ("ARARs") under federal environmental or state environmental or facility siting laws. Respondent shall identify ARARs in the Work Plan subject to EPA approval.

XIII. EMERGENCY RESPONSE AND NOTIFICATION OF RELEASES

41. In the event of any action or occurrence during performance of the Work which causes or threatens a release of Waste Material from the Site that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Respondent shall immediately take all appropriate action. Respondent shall take these actions in accordance with all applicable provisions of this Settlement Agreement, including, but not limited to, the Health and Safety Plan, in order to prevent, abate or minimize such release or endangerment caused or threatened by the release. Respondent shall also immediately notify the OSC or, in the event of his/her unavailability, the 24-hour Region 10 Duty Officer at telephone number 206-553-1263, of the incident or Site conditions. In the event that Respondent fails to take appropriate response action as required by this Paragraph, and EPA takes such action instead, Respondent shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Section XV (Payment of Response Costs).

42. In addition, in the event of any release of a hazardous substance from the Site, Respondent shall immediately notify the OSC (directly or via the Region 10 spill line at 206-553-1263) and the National Response Center at (800) 424-8802. Respondent shall submit a written report to EPA within 7 days after each release, setting forth the events that occurred and the measures taken or to be taken to mitigate any release or endangerment caused or threatened by the release and to prevent the reoccurrence of such a release. This reporting requirement is in addition to, and not in lieu of, reporting under Section 103(c) of CERCLA, 42 U.S.C. § 9603(c),

and Section 304 of the Emergency Planning and Community Right-To-Know Act of 1986, 42 U.S.C. § 11004, *et seq.*

XIV. AUTHORITY OF ON-SCENE COORDINATOR

43. The OSC shall be responsible for overseeing Respondent's implementation of this Settlement Agreement. The OSC shall have the authority vested in an OSC by the NCP, including the authority to halt, conduct, or direct any Work required by this Settlement Agreement, or to direct any other removal action undertaken at the Site. Absence of the OSC from the Site shall not be cause for stoppage of work unless specifically directed by the OSC.

XV. PAYMENT OF RESPONSE COSTS

44. Payment for Past Response Costs.

a. Within 30 days after the Effective Date, Respondent shall pay to EPA \$78,195.67 for Past Response Costs. Payment shall be made to EPA by Electronic Funds Transfer ("EFT") in accordance with current EFT procedures to be provided to Respondent by EPA Region 10, and shall be accompanied by a statement identifying the name and address of the party(ies) making payment, the Site name, the EPA Region and Site/Spill ID Number 10KM, and the EPA docket number for this action (10-2012-0191).

b. At the time of payment, Respondent shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

c. The total amount to be paid by Respondent pursuant to Paragraph 44(a) shall be deposited by EPA in the Pier 99 - Portland Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

45. Payments for Future Response Costs.

a. Respondent shall pay EPA all Future Response Costs not inconsistent with the NCP. On a periodic basis, EPA will send Respondent a bill requiring payment that includes a SCORPIOS (Superfund Cost Recovery Package Imaging and Online System) certified cost summary or other cost summary as certified by EPA, which includes direct and indirect costs incurred by EPA and its contractors. Respondent shall make all payments within 30 days of receipt of each bill requiring payment, except as otherwise provided in Paragraph 47 of this

Settlement Agreement.

b. Respondent shall make all payments required by this Paragraph by a certified or cashier's check or checks made payable to "EPA Hazardous Substance Superfund," referencing the name and address of the party(ies) making payment and EPA Site/Spill ID number 10KM. Respondent shall send the check(s) to:

U.S. Environmental Protection Agency
Superfund Payments
Cincinnati Finance Center
P.O. Box 979076
St. Louis, MO 63197-9000

c. At the time of payment, Respondent shall send notice that payment has been made by email to Wendy Watson, Attorney-Adviser, at watson.wendy@epa.gov and to EPA's Cincinnati Finance Office at acctsreceivable.cinwd@epa.gov, and to:

EPA Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, Ohio 45268

d. The total amount to be paid by Respondent pursuant to Paragraph 45(a) shall be deposited by EPA in the Pier 99 - Portland Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

46. In the event that the payment for Past Response Costs is not made within 30 days of the Effective Date, or the payments for Future Response Costs are not made within 30 days of Respondent's receipt of a bill, Respondent shall pay Interest on the unpaid balance. The Interest on Past Response Costs shall begin to accrue on the Effective Date and shall continue to accrue until the date of payment. The Interest on Future Response Costs shall begin to accrue on the date of the bill and shall continue to accrue until the date of payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to the United States by virtue of Respondent's failure to make timely payments under this Section, including but not limited to, payment of stipulated penalties pursuant to Section XVIII.

47. Respondent may contest payment of any Future Response Costs billed under Paragraph 45 if he determines that EPA has made a mathematical error, or if he believes EPA incurred excess costs as a direct result of an EPA action that was inconsistent with the NCP. Such objection shall be made in writing within 30 days of receipt of the bill and must be sent to the OSC. Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, Respondent shall within the 30-day period

pay all uncontested Future Response Costs to EPA in the manner described in Paragraph 45. Simultaneously, Respondent shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the State of Oregon and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. Respondent shall send to the EPA OSC a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, Respondent shall initiate the Dispute Resolution procedures in Section XVI (Dispute Resolution). If EPA prevails in the dispute, within 5 days of the resolution of the dispute, Respondent shall pay the sums due (with accrued interest) to EPA in the manner described in Paragraph 45. If Respondent prevails concerning any aspect of the contested costs, Respondent shall pay that portion of the costs (plus associated accrued interest) for which he did not prevail to EPA in the manner described in Paragraph 45. Respondent shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XVI (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding Respondent's obligation to reimburse EPA for its Future Response Costs.

XVI. DISPUTE RESOLUTION

48. Unless otherwise expressly provided for in this Settlement Agreement, the dispute resolution procedures of this Section shall be the exclusive mechanism for resolving disputes arising under this Settlement Agreement. The Parties shall attempt to resolve any disagreements concerning this Settlement Agreement expeditiously and informally.

49. If Respondent objects to any EPA action taken pursuant to this Settlement Agreement, including billings for Future Response Costs, he shall notify EPA in writing of their objection(s) within 7 days of such action, unless the objection(s) has/have been resolved informally. EPA and Respondent shall have 15 days from EPA's receipt of Respondent's written objection(s) to resolve the dispute through formal negotiations (the "Negotiation Period"). The Negotiation Period may be extended at the sole discretion of EPA.

50. Any agreement reached by the parties pursuant to this Section shall be in writing and shall, upon signature by both parties, be incorporated into and become an enforceable part of this Settlement Agreement. If the Parties are unable to reach an agreement within the Negotiation Period, an EPA management official at the Office Director level will issue a written decision on the dispute to Respondent. EPA's decision shall be incorporated into and become an enforceable part of this Settlement Agreement. Respondent's obligations under this Settlement Agreement shall not be tolled by submission of any objection for dispute resolution under this Section. Following resolution of the dispute, as provided by this Section, Respondent shall fulfill the requirement that was the subject of the dispute in accordance with the agreement reached or with EPA's decision, whichever occurs.

XVII. FORCE MAJEURE

51. Respondent agrees to perform all requirements of this Settlement Agreement within the time limits established under this Settlement Agreement, unless the performance is delayed by a *force majeure*. For purposes of this Settlement Agreement, a *force majeure* is defined as any event arising from causes beyond the control of Respondent, or of any entity controlled by Respondent, including but not limited to their contractors and subcontractors, which delays or prevents performance of any obligation under this Settlement Agreement despite Respondent's best efforts to fulfill the obligation. *Force majeure* does not include financial inability to complete the Work, or increased cost of performance.

52. If any event occurs or has occurred that may delay the performance of any obligation under this Settlement Agreement, whether or not caused by a *force majeure* event, Respondent shall notify EPA orally within 2 days of when Respondent first knew that the event might cause a delay. Within 5 days thereafter, Respondent shall provide to EPA in writing an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; Respondent's rationale for attributing such delay to a *force majeure* event if they intend to assert such a claim; and a statement as to whether, in the opinion of Respondent, such event may cause or contribute to an endangerment to public health, welfare or the environment. Failure to comply with the above requirements shall preclude Respondent from asserting any claim of *force majeure* for that event for the period of time of such failure to comply and for any additional delay caused by such failure.

53. If EPA agrees that the delay or anticipated delay is attributable to a *force majeure* event, the time for performance of the obligations under this Settlement Agreement that are affected by the *force majeure* event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the *force majeure* event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a *force majeure* event, EPA will notify Respondent in writing of its decision. If EPA agrees that the delay is attributable to a *force majeure* event, EPA will notify Respondent in writing of the length of the extension, if any, for performance of the obligations affected by the *force majeure* event.

XVIII. STIPULATED PENALTIES

54. Respondent shall be liable to EPA for stipulated penalties in the amounts set forth in Paragraphs 55 and 56 for failure to comply with the requirements of this Settlement Agreement specified below, unless excused under Section XVII (*Force Majeure*). "Compliance" by Respondent shall include completion of the activities under this Settlement Agreement or any

work plan or other plan approved under this Settlement Agreement identified below in accordance with all applicable requirements of law, this Settlement Agreement, the SOW, and any plans or other documents approved by EPA pursuant to this Settlement Agreement and within the specified time schedules established by and approved under this Settlement Agreement.

55. Stipulated Penalty Amounts - Work.

a. The following stipulated penalties shall accrue per violation per day for any noncompliance with this Settlement Agreement:

<u>Penalty Per Violation Per Day</u>	<u>Period of Noncompliance</u>
\$500.00	1st through 14th day
\$1,000.00	15th through 30th day
\$2,500.00	31st day and beyond

56. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 66 of Section XX, Respondent shall be liable for a stipulated penalty in the amount of \$50,000.00.

57. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: 1) with respect to a deficient submission under Section VIII (Work to be Performed), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Respondent of any deficiency; and 2) with respect to a decision by the EPA Management Official at the Office Director level or higher, under Paragraph 50 of Section XVI (Dispute Resolution), during the period, if any, beginning on the 21st day after the Negotiation Period begins until the date that the EPA management official issues a final decision regarding such dispute. Nothing in this Settlement Agreement shall prevent the simultaneous accrual of separate penalties for separate violations of this Settlement Agreement.

58. Following EPA's determination that Respondent has failed to comply with a requirement of this Settlement Agreement, EPA may give Respondent written notification of the failure and describe the noncompliance. EPA may send Respondent a written demand for payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified Respondent of a violation.

59. All penalties accruing under this Section shall be due and payable to EPA within 30 days of Respondent's receipt from EPA of a demand for payment of the penalties, unless Respondent invokes the dispute resolution procedures under Section XVI (Dispute Resolution). All payments to EPA under this Section shall be paid by certified or cashier's check(s) made

payable to "EPA Hazardous Substances Superfund," shall be mailed to U.S. Environmental Protection Agency, Fines and Penalties, Cincinnati Finance Center, P.O. Box 979077, St. Louis, MO 63197-9000 shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID Number 10KM, the EPA Docket Number 10-2012-0191, and the name and address of the party(ies) making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to EPA as provided in Paragraph 44.

60. The payment of penalties shall not alter in any way Respondent's obligation to complete performance of the Work required under this Settlement Agreement.

61. Penalties shall continue to accrue during any dispute resolution period, but need not be paid until 15 days after the dispute is resolved by agreement or by receipt of EPA's decision.

62. If Respondent fails to pay stipulated penalties when due, EPA may institute proceedings to collect the penalties, as well as Interest. Respondent shall pay Interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 59. Nothing in this Settlement Agreement shall be construed as prohibiting, altering, or in any way limiting the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violation of this Settlement Agreement or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Sections 106(b) and 122(l) of CERCLA, 42 U.S.C. §§ 9606(b) and 9622(l), and punitive damages pursuant to Section 107(c)(3) of CERCLA, 42 U.S.C. § 9607(c)(3). Provided, however, that EPA shall not seek civil penalties pursuant to Section 106(b) or 122(l) of CERCLA or punitive damages pursuant to Section 107(c)(3) of CERCLA for any violation for which a stipulated penalty is provided in this Section, except in the case of a willful violation of this Settlement Agreement or in the event that EPA assumes performance of a portion or all of the Work pursuant to Section XX, Paragraph 66. Notwithstanding any other provision of this Section, EPA may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Settlement Agreement.

XIX. COVENANT NOT TO SUE BY EPA

63. In consideration of the actions that will be performed and the payments that will be made by Respondent under the terms of this Settlement Agreement, and except as otherwise specifically provided in this Settlement Agreement, EPA covenants not to sue or to take administrative action against Respondent pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for the Work, Past Response Costs, and Future Response Costs. This covenant not to sue shall take effect upon receipt by EPA of the Past Response Costs due under Section XV of this Settlement Agreement and any Interest or Stipulated Penalties due for failure to pay Past Response Costs as required by Sections XV and XVIII of this Settlement Agreement. This covenant not to sue is conditioned upon the complete and satisfactory

performance by Respondent of his obligations under this Settlement Agreement, including, but not limited to, payment of Future Response Costs pursuant to Section XV. This covenant not to sue extends only to Respondent and does not extend to any other person.

XX. RESERVATIONS OF RIGHTS BY EPA

64. Except as specifically provided in this Settlement Agreement, nothing in this Settlement Agreement shall limit the power and authority of EPA or the United States to take, direct, or order all actions necessary to protect public health, welfare, or the environment or to prevent, abate, or minimize an actual or threatened release of hazardous substances, pollutants or contaminants, or hazardous or solid waste on, at, or from the Site. Further, nothing in this Settlement Agreement shall prevent EPA from seeking legal or equitable relief to enforce the terms of this Settlement Agreement, from taking other legal or equitable action as it deems appropriate and necessary, or from requiring Respondent in the future to perform additional activities pursuant to CERCLA or any other applicable law.

65. The covenant not to sue set forth in Section XIX above does not pertain to any matters other than those expressly identified therein. EPA reserves, and this Settlement Agreement is without prejudice to, all rights against Respondent with respect to all other matters, including, but not limited to:

- a. claims based on a failure by Respondent to meet a requirement of this Settlement Agreement;
- b. liability for costs not included within the definitions of Past Response Costs or Future Response Costs;
- c. liability for performance of response action other than the Work;
- d. criminal liability;
- e. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- f. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site; and
- g. liability for costs incurred or to be incurred by the Agency for Toxic Substances and Disease Registry related to the Site.

66. Work Takeover. In the event EPA determines that Respondent has ceased implementation of any portion of the Work, is seriously or repeatedly deficient or late in his performance of the Work, or is implementing the Work in a manner which may cause an

endangerment to human health or the environment, EPA may assume the performance of all or any portion of the Work as EPA determines necessary. Respondent may invoke the procedures set forth in Section XVI (Dispute Resolution) to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Future Response Costs that Respondent shall pay pursuant to Section XV (Payment of Response Costs). Notwithstanding any other provision of this Settlement Agreement, EPA retains all authority and reserves all rights to take any and all response actions authorized by law.

XXI. COVENANT NOT TO SUE BY RESPONDENT

67. Respondent covenants not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Work, Past Response Costs, Future Response Costs, or this Settlement Agreement, including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund established by 26 U.S.C. § 9507, based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Oregon Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Work, Past Response Costs, or Future Response Costs.

These covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 65 (b), (c), and (e) - (g), but only to the extent that Respondent's claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

68. Nothing in this Agreement shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

69. Respondent agrees not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Respondent with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous

substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if all or part of the disposal, treatment, or transport occurred before April 1, 2001, and the total amount of material containing hazardous substances contributed by such person to the Site was less than 110 gallons of liquid materials or 200 pounds of solid materials.

70. The waiver in Paragraph 69 shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person meeting the above criteria if such person asserts a claim or cause of action relating to the Site against such Respondent. This waiver also shall not apply to any claim or cause of action against any person meeting the above criteria if EPA determines:

a. that such person has failed to comply with any EPA requests for information or administrative subpoenas issued pursuant to Section 104(e) or 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) or 9622(e), or Section 3007 of the Solid Waste Disposal Act (also known as the Resource Conservation and Recovery Act or "RCRA"), 42 U.S.C. § 6972, or has impeded or is impeding, through action or inaction, the performance of a response action or natural resource restoration with respect to the Site, or has been convicted of a criminal violation for the conduct to which this waiver would apply and that conviction has not been vitiated on appeal or otherwise; or

b. that the materials containing hazardous substances contributed to the Site by such person have contributed significantly, or could contribute significantly, either individually or in the aggregate, to the cost of response action or natural resource restoration at the Site.

XXII. OTHER CLAIMS

71. By issuance of this Settlement Agreement, the United States and EPA assume no liability for injuries or damages to persons or property resulting from any acts or omissions of Respondent. The United States or EPA shall not be deemed a party to any contract entered into by Respondent or its directors, officers, employees, agents, successors, representatives, assigns, contractors, or consultants in carrying out actions pursuant to this Settlement Agreement.

72. Except as expressly provided in Section XIX (Covenant Not to Sue by EPA), nothing in this Settlement Agreement constitutes a satisfaction of or release from any claim or cause of action against Respondent or any person not a party to this Settlement Agreement, for any liability such person may have under CERCLA, other statutes, or common law, including but not limited to any claims of the United States for costs, damages and interest under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607.

73. No action or decision by EPA pursuant to this Settlement Agreement shall give rise to any right to judicial review, except as set forth in Section 113(h) of CERCLA, 42 U.S.C. § 9613(h).

XXIII. CONTRIBUTION

74. The Parties agree that:

a. this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), and that Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(h)(4) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(h)(4), for “matters addressed” in this Settlement Agreement. The “matters addressed” in this Settlement Agreement are the Work, Past Response Costs, and Future Response Costs.

b. this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. § 9613(f)(3)(B), pursuant to which Respondent has, as of the Effective Date, resolved his liability to the United States for the Work, Past Response Costs, and Future Response Costs.

c. Nothing in this Settlement Agreement precludes the United States or Respondent from asserting any claims, causes of action, or demands for indemnification, contribution, or cost recovery against any persons not parties to this Settlement Agreement. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. § 9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

XXIV. INDEMNIFICATION

75. Respondent shall indemnify, save and hold harmless the United States, its officials, agents, contractors, subcontractors, employees and representatives from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, or subcontractors, in carrying out actions pursuant to this Settlement Agreement. In addition, Respondent agrees to pay the United States all costs incurred by the United States, including but not limited to attorneys fees and other expenses of litigation and settlement, arising from or on account of claims made against the United States based on negligent or other wrongful acts or omissions of Respondent, its officers, directors, employees, agents, contractors, subcontractors and any persons acting on its behalf or under its control, in carrying out activities pursuant to this Settlement Agreement. The United States shall not be held out as a party to any contract entered into by or on behalf of Respondent in carrying out activities pursuant to this Settlement Agreement. Neither Respondent nor any such contractor shall be considered an agent of the United States.

76. The United States shall give Respondent notice of any claim for which the United States plans to seek indemnification pursuant to this Section and shall consult with Respondent prior to settling such claim.

77. Respondent waives all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Respondent shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Respondent and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

XXV. INSURANCE

78. At least 5 days prior to commencing any on-Site work under this Settlement Agreement, Respondent shall secure, and shall maintain for the duration of this Settlement Agreement, comprehensive general liability insurance and automobile insurance with limits of two million dollars, combined single limit, naming EPA as an additional insured. Within the same time period, Respondent shall provide EPA with certificates of such insurance and a copy of each insurance policy. Respondent shall submit such certificates and copies of policies each year on the anniversary of the Effective Date. In addition, for the duration of the Settlement Agreement, Respondent shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Respondent in furtherance of this Settlement Agreement. If Respondent demonstrates by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering some or all of the same risks but in an equal or lesser amount, then Respondent need provide only that portion of the insurance described above which is not maintained by such contractor or subcontractor.

XXVI. MODIFICATIONS

79. The OSC may make modifications to any plan or schedule or Statement of Work in writing or by oral direction. Any oral modification will be memorialized in writing by EPA promptly, but shall have as its effective date the date of the OSC's oral direction. Any other requirements of this Settlement Agreement may be modified in writing by mutual agreement of the parties.

80. If Respondent seeks permission to deviate from any approved work plan or schedule or Statement of Work, Respondent's Project Coordinator shall submit a written request to EPA for approval outlining the proposed modification and its basis. Respondent may not proceed with the requested deviation until receiving oral or written approval from the OSC pursuant to Paragraph 79.

79. No informal advice, guidance, suggestion, or comment by the OSC or other EPA representatives regarding reports, plans, specifications, schedules, or any other writing submitted by

Respondent shall relieve Respondent of his obligation to obtain any formal approval required by this Settlement Agreement, or to comply with all requirements of this Settlement Agreement, unless it is formally modified.

XXVII. NOTICE OF COMPLETION OF WORK

81. When EPA determines, after EPA's review of the Final Report, that all Work has been fully performed in accordance with this Settlement Agreement, with the exception of any continuing obligations required by this Settlement Agreement, including payment of Future Response Costs and record retention, EPA will provide written notice to Respondent. If EPA determines that any such Work has not been completed in accordance with this Settlement Agreement, EPA will notify Respondent, provide a list of the deficiencies, and require that Respondent modify the Work Plan if appropriate in order to correct such deficiencies. Respondent shall implement the modified and approved Work Plan and shall submit a modified Final Report in accordance with the EPA notice. Failure by Respondent to implement the approved modified Work Plan shall be a violation of this Settlement Agreement.

XXVIII. INTEGRATION/APPENDICES

82. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement: Respondents (Appendix A), Map of the Site (Appendix B), and Statement of Work (Appendix C).

XXIX. EFFECTIVE DATE

83. This Settlement Agreement shall be effective on the day the Settlement Agreement is signed by the Regional Administrator or his/her delegatee.

The undersigned representative(s) of Respondent certify(ies) that it (they) is (are) fully authorized to enter into the terms and conditions of this Settlement Agreement and to bind the party(ies) it (they) represent(s) to this document.

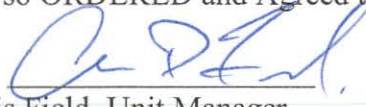
Agreed this 30th day of August, 2012.

For Respondent Milton Brown

By 

Title owner

It is so ORDERED and Agreed this 30 day of AUG, 2012.

BY:  DATE: 8/30/12

Chris Field, Unit Manager
Office of Environmental Cleanup
Region 10
U.S. Environmental Protection Agency

EFFECTIVE DATE: 8/30/2012

Appendix A

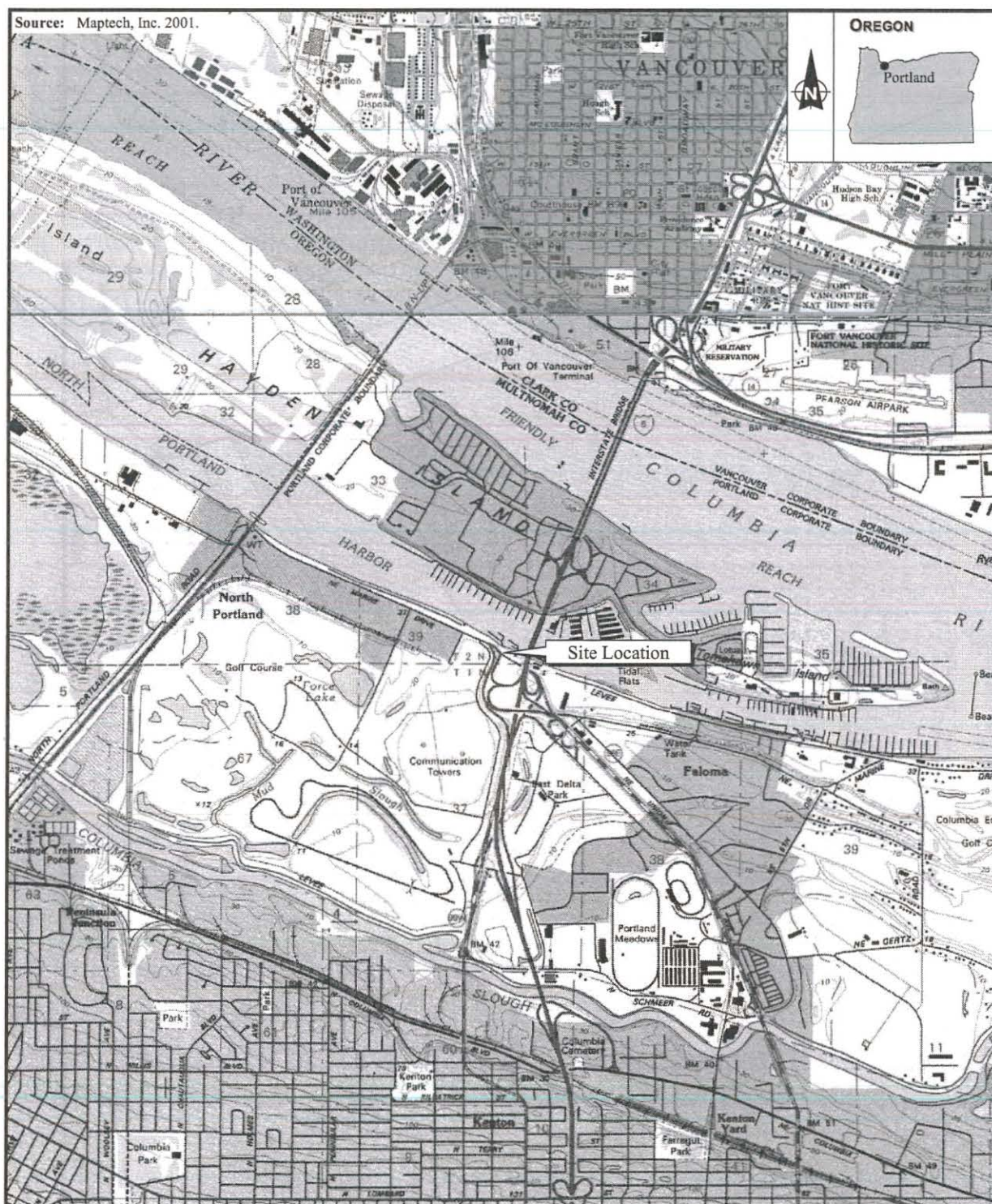
Respondent

Mr. Milton Brown

Address: 8320 NE Highway 99
Vancouver, Washington 98665

Appendix B

Source: Maptech, Inc. 2001.



ecology and environment, inc.
Global Specialists in the Environment
Seattle, Washington

1610 NORTH PIER 99 STREET
Portland, Oregon

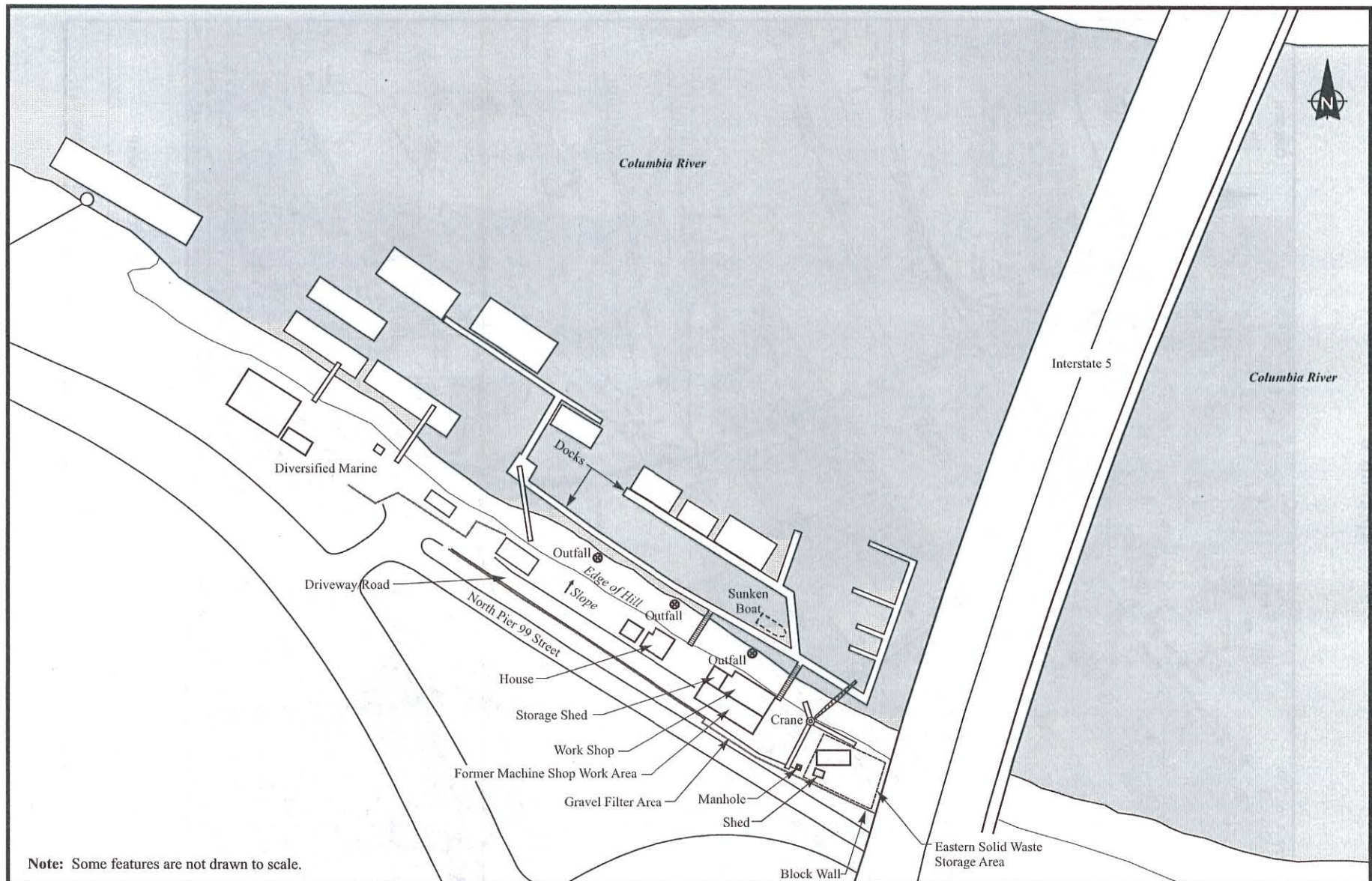
0 1,333 2,666
Approximate Scale in Feet

Figure 1
SITE VICINITY MAP

Date:
12-27-11

Drawn by:
AES

10:START-3\11080002\fig 1



ecology and environment, inc.
Global Specialists in the Environment
Seattle, Washington

1610 NORTH PIER 99 STREET
Portland, Oregon

0 128 256
Approximate Scale in Feet

Figure 2
SITE MAP

Date:
12/27/11

Drawn by:
AES

10:START-3\11080002\fig 2

Appendix C

Statement of Work Pier 99 – Portland Site

EE/CA or Equivalent – in preparation for Removal Action

I. Introduction

This Statement of Work (SOW) outlines the approach for work to be completed at the Pier 99 – Portland Site (Site) located at 1610 N. Pier 99 Street, Portland, Oregon. This SOW was prepared in connection with the Administrative Settlement Agreement and Order on Consent (Settlement Agreement) between the U.S. Environmental Protection Agency and Milton Brown (Respondent). All of the work set forth in this SOW shall be performed by the Respondent, except work specifically reserved to be performed by the EPA. The work to be completed under this SOW shall include preparation and delivery of the following documents:

- A. Engineering Evaluation/Cost Analysis (EE/CA) Work Plan (draft and final) and EE/CA Report (draft and final):
 - a. Sampling and Analysis Plan (SAP) (draft and final); and
 - b. Health and Safety Plan (HASP) (draft and final).
- B. BE Report (draft and Final)
- C. CRE Report (draft and final).

Site Description

The Pier 99 – Portland Site property has been the location of boat building, boat repair, and machine shop activities since approximately 1937. The property is located at 1610 North Pier 99 Street, Portland, Multnomah County, Oregon. The property is bounded by vacant land to the east and south, the North Portland Harbor - Columbia River to the north, Pier 99 moorage and Diversified Marine to the west, and a parking area to the south. The Site is a 1.07-acre parcel with associated docks in the North Portland Harbor - Columbia River. North Portland Harbor - Columbia River is the name given to the portion of the Columbia River that runs between Hayden Island and North Portland. The Site is currently being used to store marine vessels in the boat houses and slips along the dock.

II. ENGINEERING EVALUATION/COST ANALYSIS

Within 75 days of EPA's approval of the Final EE/CA Work Plan, the Respondents will submit a draft EE/CA report to EPA for review and comment. The EE/CA shall be prepared following EPA's 1993 *Guidance on Conducting Non-Time-Critical Removal Actions Under CERCLA* (EPA540-R-93-057), and shall contain the following sections:

A. Site Characterization

The EE/CA should summarize available data on the physical, demographic, and other characteristics of the Site and surrounding areas. These data may be available from previous investigations, or other activities at the Site by Respondents, the EPA, the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service (USFWS), and/or the Oregon Department of Environmental Quality. New data must also be collected and analyzed to support removal action alternatives.

1. Site Description and Background

Provide the following types of current and historical information where available and appropriate: site location; type of facility and historical and operational history; structures and topography; geology and soil information; surrounding land use and populations; sensitive ecosystems; and meteorology.

2. Previous Cleanup Activities

Describe any previous cleanup activities at the site, including for each the following: scope and objectives; duration; amount of money spent; nature and extent of hazardous substances, pollutants, or contaminants treated or controlled; and technologies and/or treatment levels used.

3. Source, Nature, and Extent of Contamination

Describe existing site characterization data, including the location of contaminants; quantity, volume, size, or magnitude of the contamination; physical and chemical attributes of the contaminants; and potential exposure pathways to human health and the environment.

4. Analytical Data

Describe any significant findings in narrative discussion.

5. Streamlined Risk Evaluation

The streamlined risk evaluation should focus on the specific problem that the removal action is intended to address. The evaluation uses sampling data from the site to identify the chemicals of concern, provides an estimate of how and to what extent humans and ecological receptors might be exposed to these chemicals, and provides an assessment of the health effects associated with these chemicals. The risk evaluation may identify only contaminants of concern with the affected media, contaminant concentrations, and the toxicity associated with the chemical to justify taking action. In some situations, exposure pathways can be identified as an obvious threat to human health or the environment by comparing EE/CA contaminant concentrations to standards that are potential chemical-specific applicable or relevant and appropriate requirements (ARARs) and To-Be-Considered (TBC) materials. When potential ARARs or TBCs do not exist for a specific contaminant, risk-based chemical concentrations could be used. A streamlined risk evaluation projects the potential risk and health problems occurring if no cleanup action is taken at the site.

6. Applicable or Relevant and Appropriate Requirements (ARARs) and To-Be-Considered (TBC) Materials

A detailed analysis of ARARs and TBC materials will be necessary to ensure that the removal action alternatives adequately address these requirements.

B. Identification of Removal Action Objectives

The goal of the removal action is to reduce contamination associated with former Site activities in affected media in a manner that is protective of human health and the environment and to attain ARARs and other TBC materials to the extent practicable considering the exigencies of the situation. Specific removal action objectives (RAOs) are to be developed to achieve this goal.

RAOs for protecting human receptors should express the contaminant(s) of concern, an exposure route, and an acceptable contaminant level or range of levels for each exposure route, and the RAOs for protecting environmental receptors should be expressed in terms of the medium of interest and target cleanup levels.

1. Statutory Limits on Removal Actions

If applicable, a discussion regarding section 104 (c)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended, describing the statutory limit for Fund-financed removal actions is required.

2. Determination of Removal Scope

The scope and objectives of the removal action must be clearly defined.

3. Determination of Removal Schedule

The EE/CA will include a general schedule for all phases of removal activities, including conduct of the EE/CA and both the start and completion time for the non-time critical removal action.

C. Identification and Analysis of Removal Action Alternatives

Based on the analysis of the nature and extent of contamination and on the cleanup objectives developed for the site, several technology alternatives will be subject to detailed analysis, including, but not limited to, containment, groundwater treatment *in-situ* and *ex-situ* solidification/stabilization, land application, soil washing, thermal desorption, and off-site disposal. Whenever practicable, the alternatives selection process should consider the CERCLA preference for treatment over conventional or land disposal approaches to address principal threats at the Site. The alternatives are evaluated against the short- and long-term aspects of three broad criteria: effectiveness; implementability; and cost.

1. Effectiveness

Each alternative is evaluated against the scope of the removal action and against each specific objective for final disposition of the wastes and the level of cleanup desired, including overall protection of public health and the environment and ability to achieve removal action objectives.

2. Implementability

This criterion addresses the technical and administrative feasibility of implementing an alternative and the availability of various services and materials required during the alternatives implementation.

3. Cost

Each alternative is evaluated to determine its projected costs, including direct and indirect capital costs, post removal site control, and the present worth of alternatives that will last longer than 12 months.

D. Sampling and Analysis Plan

The Sampling and Analysis Plan (SAP) details the methods and procedures concerning analytical methods employed during site-related sampling and data evaluation. The SAP incorporates the information from two separate but related reports: the field sampling plan (FSP) and the quality assurance project plan (QAPP).

Draft and final versions of the SAP shall be submitted to EPA for review and approval in accordance with the schedule set forth in this SOW. The SAP should address and identify the contaminants of concern, transport mechanisms, and receptors.

The sampling for the Site should consist, at a minimum, of the following areas, and the sampling and analysis plan shall provide figures depicting the layout and proposed sampling locations for each area.

- a. The eastern walkway that extends to the Pier 99 docks, near former sample location OP02SS.
- b. The Eastern Solid Waste Storage Area, near former sample location WS02SS.
- c. The gravel filter area located on the southwest side of the upland boat maintenance repair area, near former sample locations UP01SS.
- d. Former crane area.

Sediment that may contained in any surface drains that originate and / or terminate from the Site. At a minimum, the FSP format will address site background, sampling objectives, sample location and frequency, sample designation, sampling equipment and procedures, and sampling handling and analysis.

At a minimum, the QAPP will address project description, project organization and responsibilities, quality assurance objectives for measurement, sampling, procedures, sample custody, calibration procedures, analytical procedures, data reduction, calibration and reporting, internal quality control, performance and systems audits, preventative maintenance, data assessment procedures, corrective actions, and quality assurance report.

E. Health and Safety Plan

A site health and safety plan (HASP) will be prepared to support the field effort. The HASP shall be prepared in accordance with EPA's Superfund Standard Operating Safety Guide, dated June 1992, and all current Occupational Safety and Health Administration (OSHA) regulations applicable to Hazardous Waste Operations and Emergency Response, 29 C.F.R. Part 1910.

F. Comparative Analysis of Removal Action Alternatives

Once the alternatives have been described and individually assessed against the criteria, a comparative analysis must be conducted to evaluate the relative performance of each alternative in relation to each of the criteria. This is in contrast to the preceding analysis in which each alternative was analyzed independently without consideration of other alternatives. The purpose of the comparative analysis is to identify the advantages and disadvantages of each alternative relative to one another so that key tradeoffs that would affect the response selection can be identified.

G. Recommended Removal Action

The EE/CA should identify the action that best satisfies the evaluation criteria in CERCLA, the National Contingency Plan (NCP), and EPA policy and guidance documents based on the comparative analysis in the previous section. This description should briefly describe the evaluation process used to develop the recommended action. EPA will be responsible for determining the final action. This determination will be placed in the administrative record file concurrently with the EE/CA. This section of the EE/CA may enhance public involvement efforts by describing clearly why the alternative was recommended. Because the EE/CA is open to public comment and evaluation and because EPA is required to prepare a written response to significant comments, the recommended alternative may be modified for the final alternative selected and described in the Action Memorandum.

1. Provide Public Notice of Availability of EE/CA

EPA will publish, in the major local newspaper, a public notice describing EPA's approved preferred alternative and EE/CA results and announcing its availability for review.

2. Establish Administrative Record

EPA will establish an administrative record, publish a notice of availability of the administrative record file, hold a public comment period, and develop a written response to significant comments. The administrative record may include site-specific data and comments, technical references, and documents that reflect views of the public (including the Respondent), concerning the selection of the removal action. The EE/CA Approval Memorandum, the EE/CA and the Action Memorandum are critical components of the final administrative record file. The Respondent will assist EPA with the following actions, as requested:

a. Establish the Administrative Record File

EPA will ensure that the administrative record file is made available for public inspection and copying when the EE/CA is made available for public comment. It should be located at the Information Repository. The Respondent will work with EPA to produce information for the administrative record file, as requested.

b. Publish Notice of Availability of the Administrative Record File

EPA will publish a public notice when the EE/CA is placed in the administrative record file and is available for comment. This notice will also be used to announce a 30-day public comment period on the EE/CA. The Respondent will work with EPA, as requested.

c. Hold Public Comment Period

A 30-day minimum comment period is required, but could be extended upon request.

d. Develop Written Response to Significant Comments

EPA will prepare written response to comments received during the public comment period, and these responses will be included in the administrative record file. The Respondent will assist EPA, as requested.

III. BIOLOGICAL EVALUATION

- A. The Respondent shall prepare a Biological Evaluation (BE).
- B. At the completion of the BE, a BE Report (draft and final) shall be prepared and submitted to the EPA for review and approval.

The BE Report will be prepared generally in accordance with the biological assessment information in the USFWS and NMFS 1998 *Final ESA Consultation Handbook: Procedures for Conducting Section 7 Consultations and Conferences*.

IV. CULTURAL RESOURCES

- A. The Respondent shall prepare a Cultural Resources Evaluation (CRE) for the Site. The purpose of the CRE is to recognize and document buildings, structures, or places (historic and archeological sites) of importance to history or prehistory.
- B. At the completion of the archeological survey, a Cultural Resources Evaluation Report (draft and final) shall be prepared by the Respondent and submitted to the EPA for review and approval.
- C. The CRE shall include: (1) a comprehensive cultural resources literature review and records search for the Site-area; (2) a pedestrian survey of the Site; (3) completion of appropriate form(s) for identified cultural resources; and (4) a report documenting the results of the CRE.

V. SCHEDULE

Activities completed under this SOW shall be completed according to the following schedule:

SCHEDULE OF PROJECT DELIVERABLES		
TASK	DELIVERABLE	DUE DATE
Identify Respondent Project Coordinator	Letter	Within 14 days of the effective date of the Settlement Agreement
Identify Respondent Consultant	Letter	Within 14 days of the effective date of the Settlement Agreement
EE/CA Work Plan	Draft Work Plan	Within 21 days of identification of Respondent consultant
	Final Work Plan	Within 14 days after receipt of EPA comments on the draft Work Plan
Sampling and Analysis Plan (SAP)	Draft SAP	Within 21 days of identification of Respondent consultant
	Final SAP	Within 14 days after receipt of comments on the draft SAP
Health and Safety Plan (HASP)	Draft HASP	Within 21 days of identification of Respondent consultant
	Final HASP	Within 14 days after receipt of EPA comments on the draft HASP
EE/CA Report	Draft EE/CA Report	Within 75 days of EPA's approval of the Final EE/CA Work Plan. Lab data shall be provided to the EPA as it becomes available.
	Final EE/CA Report	Within 30 days after receipt of EPA comments on the draft EE/CA Report
BE Report	Draft BE Report	Within 60 days of EPA's approval of the Final EE/CA Work Plan
	Final BE Report	Within 30 days after receipt of EPA comments on the Draft BE Report.
CRE Assessment Report	Draft CRE Report	Within 60 days of EPA's approval of the Final EE/CA Work Plan
	Final CRE Report	Within 30 days after receipt of EPA comments on the Draft CRE Report